

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
EIGHTEENTH REGION

Park Falls, WI

**WEATHER SHIELD, INC.<sup>1</sup>**

**Employer**

**and**

**Case 18-RC-17713**

**TEAMSTERS UNION LOCAL 662**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION<sup>2</sup>**

**I. SUMMARY**

On June 9, 2010, Teamsters Union Local 662 (Petitioner) filed a petition seeking to represent certain employees of Weather Shield, Inc. (Employer) at its Park Falls, Wisconsin facility.<sup>3</sup> The issue presented in this case is whether the petitioned-for unit of production and

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<sup>1</sup>The name of the Employer appears as amended at hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (Act) a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Timely briefs from the Employer and Petitioner have been received and considered and upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The parties stipulated, and I find, that the Employer is a corporation engaged in the business of manufacturing and selling doors and related products. During the past calendar year, a representative period, the Employer purchased and received products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Wisconsin.

3. The parties stipulated, and I find, the Petitioner is a "labor organization" within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> The parties stipulated that any unit found to be appropriate should include "all full-time and regular part-time production and maintenance employees, including line coordinators and plant clericals employed by Weather Shield, Inc. at its 400 Legacy Lane, Park Falls, Wisconsin facility", and should exclude "the industrial engineer, product design engineer, plant controller, plant managers, production control and operations manager, office clerical employees, technical employees including the CNC programmer, guards and supervisors, including environment and safety supervisors, and all other employees."

maintenance employees should include the following four positions: group leader, key person, production scheduler, and expeditor. The Employer maintains the positions of group leader and key person should be excluded from the unit because employees in these positions are supervisors within the meaning of Section 2(11) of the Act, and maintains the positions of production scheduler and expeditor should be included in the unit because they functionally share a community of interest with the production employees. The Petitioner asserts the employees in positions of group leader and key person do not possess supervisory authority and, therefore, should be included in the petitioned-for unit and the positions of production scheduler and expeditor should be excluded from the unit because they do not share a community of interest with the production employees.

Based upon my review of the record, and for the reasons set forth below, I conclude the Employer has met its burden of establishing that employees in the group leader position possess the authority, in the interest of the Employer, to reward, responsibly direct, and assign employees, and to effectively recommend discipline, layoff, and recall. I find the group leaders use independent judgment, in more than a merely routine or clerical manner, in performing these actions. I also conclude that since it is undisputed that key persons have the same authority as group leaders and because group leaders report to key persons, key persons are also statutory supervisors. As such, the group leaders and key persons are excluded from the unit as Section 2(11) supervisors.

Based upon my review of the record, and for the reasons set forth below, I conclude there is insufficient evidence to establish individuals in the production scheduler and expeditor positions functionally share a community of interest with the employees in the petitioned-for unit and, therefore, are excluded from the unit.

## II. FACTUAL SUMMARY

### A. The Employer's Operations

The Employer operates a plant at 400 Legacy Lane, Park Falls, Wisconsin where it produces door products.<sup>4</sup> The plant was built in 2001 and has approximately 420,000 square feet of manufacturing space with a 25,000 square foot warehouse on the property. The Employer produces door products based on orders from its customers. These orders are processed through the Employer's scheduling department at its Medford, Wisconsin facility. The orders are then electronically transmitted to the Park Falls facility where the products are manufactured and shipped to the customers as finished products.

The Employer has 16 areas in the plant.<sup>5</sup> There are approximately 170 employees employed at the Park Falls facility, including four production supervisors<sup>6</sup>, one maintenance supervisor, 14 group leaders,<sup>7</sup> two key persons, and one plant manager. The plant manager is responsible for overseeing all employees in the plant except the product and process engineers. Each production supervisor oversees a number of departments and is responsible for ensuring the safety, quality, and productivity in each of these departments. The production supervisors report directly to the plant manager. The key person acts as an assistant to the production supervisor and also oversees departments in the plant. The key persons report directly to the production supervisors. The group leader oversees specific production lines in the plant and reports directly

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<sup>4</sup> From the record, it also appears the Employer owns facilities in Medford and Mosinee, Wisconsin; however, these facilities are not involved in this proceeding.

<sup>5</sup> This number is extracted from Employer Exhibit 1, which contains a listing of the names, job titles, and rates of pay for hourly employees. These areas from Employer Exhibit 1 are as follows: Maintenance, Alum Fabricating, SDL, Legacy, Poly Paintline, Patio Door, Sanding, Transoms, Trim, Glass, Loading Dock, UPS, EDS, Inventory Control, and Quality Control. It is unclear from the record if these areas are referred to as departments, lines, or areas.

<sup>6</sup> Adam Thompson (Supervisor of Alum Fabricating, SDL, Legacy), Jim Bescup (Supervisor of Poly Paintline, Patio Door, Sanding), Steve Popovich (Supervisor of Transoms, Trim, Glass, Loading Dock, UPS, Expeditors, EDS), and Charlie Logan (Supervisor of Inventory Control)

<sup>7</sup> The parties were able to stipulate on the record there are 14 group leaders.

to the key person and production supervisor. Production employees work directly under the group leaders in their area while maintenance employees work directly under a maintenance supervisor. Production employees, group leaders, and key persons typically work from 5:45 a.m. until 3:15 p.m. or 6:00 a.m. until 3:30 p.m., however, it is unclear from the record which days of the week these employees typically work. It is also unclear from the record which days and hours maintenance employees work.

At the Park Falls facility, all production and maintenance employees, production schedulers, expeditors, group leaders and key persons are paid hourly, receive the same benefits, work under the same handbook, and wear the same type of name badges. Production employees are paid roughly between \$12.60 and \$14.01 per hour.<sup>8</sup>

#### **B. The Disputed Positions of Group Leaders and Key Persons**

The Employer asserts individuals employed in the positions of group leader and key persons are supervisors, as defined by Section 2(11) of the Act, and, therefore, should be excluded from the petitioned-for unit. The Union maintains employees employed in the positions of group leader and key person are not statutory supervisors and should be included in the petitioned-for unit. In support of its position, the Employer introduced the testimony of Production Supervisor Steve Popovich, Key Person Jodi Wartgow, Group Leader Dennis Jansen, and former Production Supervisor Greg Spirko.<sup>9</sup> The Union introduced testimony from Key Person Tianna Tesmer, Group Leader Wendy Hansen, and former Group Leader Bob Meinholz.<sup>10</sup>

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<sup>8</sup> This is extracted from Employer Exhibit 1. Only two employees, both SCM Machine Center Operators, make \$14.01 per hour. After \$14.01, the next highest rate of pay for a production employee is \$13.67 per hour.

<sup>9</sup> Popovich began working for the Employer in 2002 as a production employee, was promoted to a group leader position, then to a quality control coordinator position, and then became a production supervisor in 2005. Wartgow was a group leader for nine years until she was promoted to a key person position in February 2010. Jansen has been a group leader for the last two years. Spirko began working for the Employer in 2008 until he left in May 2010. At the time of Spirko's departure, he was a production supervisor.

<sup>10</sup> Tesmer was a group leader for seven years until she was promoted to production supervisor. Tesmer was a

## **1. Responsibilities and Duties of Group Leaders**

The Employer currently employs 14 group leaders who are paid between \$13.61 and \$14.65 per hour. Popovich testified group leaders are responsible for the safety, quality, and productivity in the area they are assigned and they do this by coaching, mentoring, and training employees and recording and reporting daily production numbers. The Employer submitted a group leader job description as Employer Exhibit 5. This document states the main responsibilities of a group leader are, among other things, to instruct, coach, and lead employees to produce a quality product and meet production goals, to monitor “throughput” on the production line to meet schedules as required, to insure all employees are trained in all operations within the lines whenever possible, to complete performance reviews in a timely manner, to solve problems within the lines, to implement training for new hires, and to assist in administering disciplinary action through verbal and written warnings. The Employer submitted a job posting for a group leader position from March 3, 2010 as Employer Exhibit 8. This posting lists the ability to lead and mentor employees as a qualification for the job. The posting also states “Previous supervisory experience preferred.”

## **2. Responsibilities and Duties of Key Persons**

The Employer currently employs two key persons who are paid between \$16.01 and \$16.38 per hour. The key person position was created in February 2010. There was not an official job description for the key person position at the time of the hearing. Popovich testified a key person is responsible for overseeing departments and filling in for the supervisors when they are absent. Jodi Wartgow testified she oversees the EDS department where she works as a key

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production supervisor for one year until her position was consolidated, at which point, she accepted the key person position in February 2010. Hansen has been a group leader for the last six to seven years. Meinholz was a group leader from 2002 until 2008, when he was removed from his position of group leader.

person. She testified she answers questions group leaders may have, makes sure products get out on time, ensure employees work safely and there are no problems with equipment, updates late sheets, which are documents detailing open orders in the facility, and moves employees around to different areas or lines to help with the flow. Wartgow testified she floats around among the four lines in her department and tries to make sure every line in her department has the product it needs to get the parts out. She also testified she fills in for Popovich any time he is unavailable, which includes a period of time every work day when he is attending a meeting. Wartgow testified that she, as a key person, has the same authority as the group leaders, however, she oversees and is responsible for more individuals and a larger area of the plant than the group leaders.

### **3. Supervisory Authority of Group Leaders and Key Persons**

The testimony in the record indicates key persons have the same level of responsibility and authority as group leaders and that group leaders work directly under key persons. For this reason, the record appears to focus on the supervisory authority of the group leaders. Therefore, although it also applies to the key person position, the specific discussion of supervisory indicia below relates to the position of group leader, unless otherwise indicated.

#### **a. Evaluations and Wage Increases**

##### **i. Group Leaders**

Evaluations are used by the Employer to assess employees. When employees are in wage progression, they are given evaluations every 240 working hours until they reach the maximum rate of pay for their job title. After employees have reached the maximum rate of pay for their position, they are then given an evaluation annually. Employees have the opportunity to receive a

wage increase based on their evaluations until they reach the maximum rate of pay for their job title.<sup>11</sup>

The production supervisors provide evaluation forms to the group leaders when it is time for evaluation of production employees in their area. Production employees are evaluated in the following categories: job knowledge, attendance, safety, job flexibility, quality/accuracy, work quantity, utilization of time, follows directions, asks questions, and work attitude. Group leaders complete the evaluation form about the employee by assigning a numerical score of one through five, with one meaning "poor" and five meaning "excellent," to the employee for each category. Group leaders can also write comments on the evaluation if they choose to do so. A current group leader, Dennis Jansen, testified he uses his own judgment when completing the evaluation and he is not told by anyone how many points to give to an employee. Wartgow, Jansen, and Popovich testified there are no specific guidelines for filling out the evaluations. The group leader adds up the scores from the ten categories to determine a final score. The group leader then consults the scale on the bottom of the evaluation form which lists how many points are necessary in order to receive certain wage increases. For example, if an employee receives a final score of 43-50 points, the employee is given a 50-cent wage increase unless that raise would put the employee past the maximum pay rate for his/her job title. In those situations, the group leader assigns the maximum wage increase possible or the raise amount is later adjusted to reflect the maximum wage increase possible. An example of this occurring is reflected in Employer Exhibit 21, an evaluation of an employee, L.H., completed by his group leader, Dennis Jansen, in January 2010.<sup>12</sup> In this evaluation, L.H. scored enough points to warrant a 50-cent wage increase,

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<sup>11</sup> Employees are also eligible for a cost-of-living increase if they have a certain number of absences or less.

<sup>12</sup> Due to privacy concerns, any employee discussed herein who is not a group leader, key person, or production supervisor will only be referred to by his/her initials. Each set of initials herein refers to one person, as there are no

however, the document shows he received a 23-cent wage increase to the top of his pay rate. The Employer also submitted into evidence as Employer Exhibit 23 a packet of evaluations given to an employee, F.C. Her evaluation from January 2010 also indicates she received enough points for a 50-cent wage increase but was given a 29-cent raise to the top of her pay rate.

After the evaluation is discussed by the group leader, meeting alone with the employee, the group leader then typically reviews the evaluation and scores with the employee, and has the employee sign the form. Jansen testified he usually fills out the evaluation form when he meets with the employee. After the employee has signed the evaluation, the group leader submits it to the production supervisor, who submits it to Human Resources. Popovich testified the production supervisors may not always sign the evaluation forms before they are sent to Human Resources if the production supervisor is absent when the evaluation was given to the employee. This was demonstrated through the November 2009 evaluation of F.C. that was submitted into evidence by the Employer as part of Employer Exhibit 23.

The evaluation of F.C. from January 2008 indicates she received enough points for a 50-cent wage increase (the highest amount per the scale), but she was given a 52-cent raise. Popovich testified he was not sure why F.C. received a wage increase of 52 cents instead of 50 cents. The December 2008 evaluation of F.C. indicates she was eligible for a 40-cent wage increase based on the points she received but was given a 50-cent raise. Popovich, who was not the supervisor who signed this evaluation, testified group leaders have the option to give an employee a higher raise than the scale suggests. Wartgow testified group leaders can give employees a higher raise than the scale but permission is needed from a supervisor. Wartgow testified she had to get permission from Popovich in November 2008 before giving an employee,

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instances of two or more employees discussed herein who have the same initials.



J.B., a raise higher than what she should have earned based on the scale for her final score. This evaluation of J.B. was submitted into evidence as Employer Exhibit 27. Supervisors do have the authority to overrule an evaluation given by a group leader, however, Popovich testified that he has never personally overruled one and there was no evidence submitted to contradict this. There is no evidence in the record of any specific instances of any other supervisors overruling an evaluation given by a group leader.

The Employer also submitted into evidence as Employer Exhibit 30 a packet of four evaluations given to L.H. by Jansen. In all four evaluations, L.H. received a wage increase based on his final score, computed by Jansen. In total, the Employer submitted into evidence twenty evaluations completed by group leaders for production employees that demonstrated a wage increase was given to the employees based on their final scores.

Wartgow, Popovich, Jansen, and Key Person Tianna Tesmer all testified the process for evaluations is as described above. A former group leader, Bob Meinholz, testified when he was a group leader, his supervisor would provide him with the evaluation form, which he would complete and return to his supervisor to review and change prior to giving to the employee. Meinholz did not provide any specific instances of his supervisor changing an evaluation form he filled out. Meinholz also testified that in around 2006 he was told by his supervisor, Paul Lehman, that only supervisors would fill out evaluations of employees from that point forward. The record is unclear as to whether or not this change in authority was only directed to Meinholz or other group leaders and if so, when the policy was changed again to require group leaders to evaluate production employees. A current group leader, Wendy Hansen, testified her supervisor would give her an evaluation form for an employee and she would fill it out and return it to her

supervisor, who would make changes and adjustments to it. Hansen did not provide any specific instances of her supervisor changing an evaluation form she filled out.

## **ii. Key Persons**

Key persons evaluate the group leaders and use the same form the group leaders use to evaluate production employees. The production supervisor provides the evaluation forms to the key persons when it is time for evaluation of the group leaders in their area. The process a key person follows for filling out an evaluation form for a group leader is the same as the process of a group person filling out an evaluation form for a production employee. Popovich testified that since a group leader does not work directly on the line, the performance of the line he/she oversees is evaluated in the quality/accuracy and quantity categories on the group leader's evaluation. Group leaders also receive wage increases based on the final score given to them by the key person.<sup>13</sup> Wartgow testified she has not yet completed an evaluation as a key person because none have come up since February 2010. Tesmer testified she has completed one evaluation of a group leader since being a key person, and that the evaluation affected the pay of the group leader. This evaluation was not discussed further or submitted into evidence.

## **b. Responsibly Direct**

### **i. Group Leaders**

The Employer maintains group leaders responsibly direct employees because they are held accountable for the areas they oversee. The Employer submitted into evidence two disciplines and two memos issued to group leaders for problems within their departments. The Employer submitted into evidence as Employer Exhibit 9 a verbal warning issued to Group

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<sup>13</sup> Prior to the creation of the key person position, the production supervisor evaluated the group leaders. The Employer submitted three evaluations of group leaders into evidence as Employer Exhibits 13, 19, and 20. However, these evaluations were completed prior to the creation of the key person position and were completed by a production supervisor.

Leader Amy Hoesly on April 20, 2010 for not ensuring products produced in her area met all specifications before leaving the production line. Similarly, the Employer submitted into evidence as Employer Exhibit 10 a verbal warning to Group Leader Craig Binning because two doors in his area came out with the wrong hinge code. In both situations, Hoesly and Binning did not produce the defective items, but were disciplined for not ensuring the products were produced properly.

Another group leader, Louis Heizler, was issued a memo to his personnel file on November 15, 2006 regarding concerns management had with errors coming out of Heizler's area. The memo states Heizler must inspect all trimming procedures done on the units as a group leader. A copy of this memo was submitted into evidence by the Employer as Employer Exhibit 11. Meinholz was also issued a memo to his personnel file in July 2007 because Meinholz's department made an error that resulted in a backorder. The details surrounding this error were not discussed on the record, however, the memo was submitted into evidence by the Employer as Employer Exhibit 33. Meinholz testified he was criticized in his evaluations more than once for the performance of the line he oversaw as a group leader and that he was put on a plan of correction for the performance of the line he oversaw. Meinholz also testified he was removed from his group leader position for lack of respect from the employees under him on the line.

Wartgow testified Popovich informed her when she received the group leader position that she could be disciplined if her line did not perform. Jansen testified he attended a group leader meeting a year and a half ago where the group leaders were told they would be held accountable and could be disciplined for bad quality or poor numbers that came out of the area overseen by the group leader. Jansen testified he and the other group leaders were told they would first be issued warnings if their areas did not meet the defined MPO (minutes per opening)

production standard,<sup>14</sup> and the discipline could go as far as their losing their group leader positions.

The Employer maintains the performance of the areas the group leaders oversee is also taken into account in the group leaders' evaluations. Popovich testified that since group leaders do not generally work directly on the line, the group leaders are evaluated on how well their area performs in two categories on the evaluation form (quality/accuracy and quantity). The Employer submitted into evidence as Employer Exhibit 13 an evaluation of Group Leader Mary Petroski from September 2009. On this evaluation, the evaluator, Popovich, gave Petroski a score of four in both the quality/accuracy and quantity categories because her department keeps up with all schedule requirements. This comment was also handwritten on the evaluation. Hansen also testified she is held accountable on her evaluation for the performance of her work area even if it was not her sole work and the line did not perform well. Tesmer testified that she, as a group leader, was judged in her performance evaluation by how well her line performed.

Since the group leaders are considered accountable for their lines, Wartgow testified that when she was a group leader she had the authority to stop employees if they were incorrectly performing a task. In those situations, she testified she would confront the employee and then show them how to do the job properly. Wartgow provided an example of stopping an employee, J.B., from making a sill incorrectly and trained her how to do this task properly.

## **ii. Key Persons**

Wartgow testified she was told in February 2010 when she accepted the key person job by Popovich that it is her responsibility to ultimately make sure the units go out complete. She also

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<sup>14</sup> MPO is the measurement of how many employee minutes it takes to complete one opening leaving the plant as a finished product. An opening is generally considered a door, however, a double-wide French door, for example, would be considered two openings.

testified that she was told if she did not do her job properly, which meant overseeing the department to ensure units go out complete and accurately, she could receive disciplinary action. Wartgow also testified she is held accountable for the same things she was accountable for as a group leader, except now she is held accountable for the performance of the entire department, instead of one smaller area.

**c. Assignment of work**

**i. Group Leaders**

Newly hired production employees are directed to a group leader who assigns them their first job. The group leader then trains the employee or pairs the new hire with an experienced employee to learn the job. Popovich, a former group leader, testified when he made these first job assignments for new hires, he would look at their known skills and abilities and place them in jobs where he thought they would perform best. Wartgow also testified that when she was a group leader, she assigned new employees their first jobs and employees stayed on that job unless their performance was not as good as expected, at which point, she would move them around to another position until they were able to perform their best. Wartgow testified the group leaders are able to determine the skill set of employees by looking at the performance of the employees. As an example, Wartgow testified she moved a new hire, J.B., from her first job on the assembly tables to the fiberglass sills once Wartgow recognized J.B.'s skill for being detail-oriented, which was needed for the fiberglass sills job. Wartgow testified she used her judgment in moving J.B. and other employees and no one above her ever challenged her decisions.

Popovich testified group leaders routinely move employees around their areas for various reasons, such as instances when there is not enough work at one station, or when one station has more work than it normally does, or when someone has called in or is absent from work.

Popovich also testified to witnessing Group Leader Scott Liljedahl, days before the hearing, move an employee, R.U., to a different line in the same department because work was slow. Jansen testified he provides the employees in his area with one day advance notice of where they will be assigned for work. Jansen testified he makes these assignment decisions based on quantity of work coming in and skills needed for the work. For example, Jansen testified that his best stainer for the Atzel Noble type of door was S.S., however, S.S. was on vacation when staining on this type of door needed to be completed. Jansen testified he did not move his second-best stainer, K.P., onto this job because K.P. was working on another job he excelled at. Therefore, Jansen selected another employee, A.J., to stain the Atzel Noble. Jansen also testified he moves employees around his area daily, if not hourly.

Popovich testified if a group leader in one area wants to move an employee into or out of his/her area, the group leader will talk to the group leader of the other area where he/she wants the employee to come from or go to. Popovich testified the production supervisor is generally not involved in this process, unless the group leaders cannot work out the move among themselves. There was no specific testimony in the record regarding instances of group leaders discussing among themselves moving an employee from one area to another.

Popovich testified group leaders have the authority to require the employees on their line to come in early or late based on production needs and that the group leaders do not need permission from a production supervisor before making this decision. Popovich testified that earlier in the week of the hearing, Group Leader Fred Schutte had an employee, K.G., come in one hour early to finish some work that had not been completed the prior week and that Schutte did not get permission from anyone before doing this.<sup>15</sup> Wartgow confirmed she possessed this

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<sup>15</sup> It is unclear from the record whether Schutte required K.G. to come in early or asked him if he could like to come

authority to change start times for employees when she was a group leader, although she did not provide any specific examples of when she did this.

Popovich testified the group leaders have the authority to shut down a line, while former group leaders Tesmer and Meinholz testified they did not have the authority to shut down a line when they were group leaders.

The Employer submitted into evidence four disciplinary actions as Employer Exhibits 14, 15, 17, and 18 that it maintains establish employees are disciplined for refusing the orders of group leaders. The Employer also submitted into evidence as Employer Exhibit 16 a memo to an employee for lack of respect of her group leader. Employer Exhibit 14 is a written warning issued to an employee, C.B., on September 22, 2008 for insubordination for refusing to follow the instructions of her group leader, Bob Meinholz, to trim TFT (thin fin aluminum trim). Employer Exhibit 15 is a verbal warning issued to an employee, S.B., on May 24, 2007 for insubordination for refusing to work in an area she had been assigned to by her group leader, Wendy Hansen. Popovich testified Hansen requested S.B. be disciplined for this incident and that he issued the warning to S.B. based on Hansen's recommendation and without further investigation. Employer Exhibit 16 is a memo to an employee, A.H., issued on April 6, 2006 from Popovich that states he had a discussion with A.H. about her lack of communication with and lack of respect shown to her group leader. The memo states A.H. was informed she is to follow the direction of her group leader and supervisor and cannot question their job or job duties. The memo also states if any further action of this type takes place, A.H. could be disciplined. Employer Exhibit 17 is a written warning issued to A.H. on April 18, 2007 for insubordination for ignoring a request by her group leader, Eric Stoll, to complete frames in the area. Employer Exhibit 18 is another

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in early. It is also unclear why Schutte had K.G. come in early but not other employees, or whether K.G. was paid overtime.

written warning issued to A.H. on June 13, 2006 for using profane language with Stoll. Hansen also testified employees in her area cannot refuse her instructions.

**ii. Key Persons**

Wartgow testified about a time within the last few months when she, as a key person, needed an employee, J.P., from Group Leader Scott Liljedahl's area for another part of the department. Wartgow testified she and Liljedahl worked together to move J.P. to the area where Wartgow needed him. Wartgow testified she was aware of J.P.'s skills and abilities from talking with the group leaders in her area and that is how she selected him to move within the department.

Tesmer testified she does not currently have the authority to shut down lines as a key person. A former production supervisor, Greg Spirko, testified Tesmer shut down a line in March 2010 while she was filling in for him. Spirko testified it did not make a difference that Tesmer was filling in for him at the time she shut down the line and that she does have the authority to shut down a line as a key person.

**d. Discipline**

On the record, the parties stipulated the group leaders do not have the ability to independently issue disciplinary actions to employees and they do not sign disciplinary actions. Popovich testified group leaders, however, can recommend discipline. As discussed earlier, the Employer submitted into evidence Employer Exhibit 15, which is a discipline issued to an employee by Popovich after a recommendation by a group leader without any further investigation. Jansen testified he had gone to Human Resources about two years ago and asked that an employee, D.P., receive a warning for questioning the work he was doing and the work others were doing. Jansen testified Beth Fall in Human Resources issued a verbal warning to



D.P. without investigating the matter any further. Jansen also testified that about a year ago, he recommended another employee, A.J., be issued discipline for being unruly, wandering around, and missing work. Jansen testified there was no further investigation done and A.J. was issued a verbal or written warning based on his recommendation.<sup>16</sup> Wartgow also testified she requested discipline be given to an inventory controller for using profane language towards her and that the inventory controller was disciplined. However, Wartgow was unsure whether or not any further investigation was done after she made the request for discipline.

**e. Layoff and recall**

Popovich testified group leaders are responsible for determining who is to be laid off from their area and they make these decisions based on their evaluation of the skills and abilities of the employees they oversee. Employees may be laid off temporarily, such as being sent home for the rest of the day when work is slow, or for a longer period of time or indefinitely. Popovich testified that several weeks before the hearing, Group Leader Fred Schutte made the decision on a Wednesday to send home all but two of the employees in his area because the work had been completed for the week. Popovich testified Schutte made this decision on his own and did not seek approval from him prior to making the decision. Jansen testified that he laid off two employees for a partial day due to lack of work and laid off another employee for a day and a half due to lack of work. It is unclear from the record whether or not Jansen sought approval from a supervisor prior to making the decision to send these employees home.

Popovich testified group leaders can come to the production supervisor for approval for an indefinite or a long-term layoff. Sometimes, group leaders are approached by a supervisor for the names of employees in their area who the group leader feels should be laid off. Popovich

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<sup>16</sup> Copies of these disciplines were not entered into the record and there was no evidence submitted to contradict Jansen's statement that no further investigation was done in either of these situations.

testified that over a year ago, the Employer needed to reduce costs, so he asked Wartgow for the names of two people she wanted to remove from her department, which she provided to him. It is unclear from the record whether or not the Employer ultimately laid off the two people Wartgow requested. Popovich, however, testified he does not recall any time he changed the decision of a group leader regarding layoffs. Jansen also testified that around a year ago, the Employer needed to make some cuts and he was asked who he felt were the best employees in his area to keep from being laid off. Jansen testified he looked at employees' cross-training, attitude, safety, quality, and ability to work in more than one position when making the decision who to recommend for lay off. Jansen ultimately selected two people he wanted to keep in the department. Jansen testified the other employees in his department were then placed on indefinite layoff.

Popovich testified the group leaders also make the decision who to recall from layoff. Popovich testified that within the past several months, the Employer needed to find a replacement for an employee who was quitting, so he gave the list of laid off employees to Group Leader Mary Petroski and asked her to select an employee to come back to work. Petroski selected B.S., who was recalled and returned to fill the open position. Popovich testified there was no formula or policy that dictated who Petroski should select to bring back to work and she used her own judgment in selecting B.S.

Tesmer, Meinholz, and Hansen testified they did not have the authority as group leaders to lay off or recall employees.

**f. Transfer**

Popovich testified permanent transfers are done by the production supervisor but based on group leader recommendations. Popovich gave the example of Group Leader Mary Petroski

requesting an employee, T.S., transfer from the pre-hung assembly line to the frame assembly line, which Popovich authorized.

**g. Addressing of grievances**

Popovich and Wartgow testified employees go to their group leader first with any complaints or grievances they may have. If the group leader does not believe he/she can handle the issue or the group leader is unavailable, the employee is supposed to bring the complaint or grievance to the key person or production supervisor. Popovich testified the group leaders do not need permission from a production supervisor to address employee concerns. Wartgow testified about a time when an employee complained to her that another employee was not doing her job and so Wartgow approached the employee. Jansen testified he prefers to take a group approach to problem-solving by raising employee concerns at group meeting with his employees to see if a solution can be reached. However, Jansen testified there have been occasions when he has had to address a problem or complaint without the support of the group of employees. Jansen provided an example of deciding on his own to rotate painters, a week before the hearing, to address a specific employee concern about parts not being painted properly even though a majority of his employees did not feel this was the best course of action.

**h. Other supervisory authority of group leaders**

Meinholz and Hansen testified group leaders do not have the authority to hire or terminate employees. This matter was not discussed any further on the record. There was no discussion on the record as to whether or not group leaders have the authority to suspend or promote employees. Group leaders do not typically receive any training on how to be a group leader.

### **C. The Disputed Positions of Production Schedulers and Expeditors**

The Employer maintains the production schedulers and expeditors should be included in the petitioned-for unit because they share a community of interest with production employees. The Union maintains individuals employed in these two positions perform office clerical work and should, therefore, be excluded from the petitioned-for unit.

#### **1. Production Schedulers**

The Employer currently employs four production schedulers, who are paid between \$13.20 and \$13.84 per hour.<sup>17</sup> Each of the following departments has a production scheduler: EDS, Inventory Control, Patio Door, and Legacy. The production schedulers work primarily in an office. Meinholz testified the production schedulers work in an office on the second floor mezzanine. Tesmer also testified all the offices are located in the central complex. Tesmer testified the production schedulers in the Patio Door, Inventory Control, and EDS departments share an office, and the production scheduler in the Legacy department works on the floor. It can be inferred from the testimony of Tesmer and Meinholz that the production schedulers generally work on the second floor mezzanine of the central complex where the other offices are located. The production schedulers work directly under the group leaders in their respective departments.

After orders are scheduled at the Employer's Medford facility, the orders are electronically transmitted to the production schedulers at the Employer's Park Falls facility. Once the production scheduler receives the schedule of orders, he/she breaks down the schedule into similar orders and prints out tickets to be given to the group leaders on the lines where the products will be produced. The production schedulers are also responsible for compiling the late sheets, a document which details for any given date what orders are still outstanding in the plant.

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<sup>17</sup> This number is extracted from Employer Exhibit 1.

Popovich testified the production schedulers will help out on the production lines if they have finished their scheduling duties. Wartgow also confirmed Popovich's testimony and testified that production schedulers work two to three days on average per week on the production floor. It is unclear what Wartgow meant when she said they worked "on the production floor" or for how long they work at any one time. However, the record does not contain any specific examples of production schedulers working on the production lines. There were no production schedulers who testified at the hearing and there is no evidence in the record regarding how much contact production schedulers have with production employees. Meinholz testified that he has never seen a production scheduler working on the production floor. Wartgow testified that neither the production schedulers, nor the expeditors, fill in for employees on the production lines.

## **2. Expeditors**

At the time of the hearing, the Employer employed two expeditors who were both paid \$14.75 per hour. The expeditors do not work in any specific department and are based in an office in the center of the complex where other offices are located. In Employer Exhibit 1, the expeditors are listed as their own category and are not included under any other department heading. The expeditors report directly to Production Supervisor Steve Popovich. There are no employees who report directly to the expeditor. The expeditors are responsible for keeping track of all of the products being produced in the facility and making sure the products are completed on time. Wartgow testified it is a rare occasion when an expeditor works on the production line, but that this can happen if the product is important and needs to be pushed through the process. However, there were no specific examples of this occurring in the record. Tesmer and Meinholz both testified that neither of them had ever seen an expeditor work on the production line.

Primarily, the expeditors inform the key persons and group leaders as to which products need to be pushed through the line to ensure timeliness. If the Employer needs special or extra parts, the expeditor will secure these from outside manufacturing facilities. Wartgow testified expeditors are similar to line coordinators, however, line coordinators oversee one line and expeditors oversee the entire plant. A detailed description of a line coordinator is not found in the record. Wartgow only states a line coordinator pushes a product to get out on time and she is the line coordinator for the EDS department. There is no evidence in the record regarding the contact expeditors have with the production employees and there was no direct testimony from any expeditor in the record.

### III. LEGAL ANALYSIS

#### A. Supervisory Authority Issues

One of the issues before me is whether individuals in the positions of group leader and key person are supervisors within the meaning of Section 2(11) of the Act, which defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

This section of the Act identifies a three part test. Individuals are supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) their authority is held “in the interest of the employer.” *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001) (citing *NLRB v. Health Care & Retirement Corp of America*, 511 U.S. 571, 573-574 (1994)); *Oakwood Healthcare, Inc.*, 348 NLRB 686,

688 (2006). Significantly, it is not required that the individual has exercised any of the powers enumerated in the statute, rather, it is the existence of the power that determines whether the individual is a supervisor. *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003).

The Board in *Oakwood* held that “judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement... [and that] the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices. 348 NLRB at 693.

The burden of proof rests on the party asserting supervisory status, and the asserting party must establish by a preponderance of the evidence that such status exists. *Id.* at 694. Purely conclusionary evidence does not satisfy this burden. Rather, the Board requires direct evidence that the putative supervisor actually possesses the authority at issue. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Where the evidence is conflicting or inconclusive, the burden is not satisfied on that particular indicia in controversy. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). With these legal principles in mind, supervisory status should not be too broadly construed. The Board is cautious in finding an individual to be a supervisor because that individual loses the protections of the Act. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1138 (1999). Additionally, it is the intent of Congress not to exclude those employees who perform minor supervisory functions, such as lead persons and straw bosses. See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 283 (1979); *Oakwood*, 348 NLRB at 690; *NLRB v. Grancare*, 170 F.3d 662, 666 (7<sup>th</sup> Cir. 1999).

## **1. Group Leaders**

Based upon my review of the evidence, and for the reasons set forth below, I conclude the group leaders are Section 2(11) supervisors because they have the authority, in the interest of the Employer, to reward, responsibly direct, assign, effectively recommend discipline, and effectively recommend layoff and recall.

### **a. Ability to evaluate and reward employees**

Section 2(11) of the Act does not include the term “evaluate” as one of the indicia considered in determining whether an individual is a supervisor. When an evaluation, by itself, is not used to affect an employee’s wages and/or job status, the person conducting the evaluation is not a supervisor. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 (1999). However, the Board has found supervisory status when the purported supervisor conducts evaluations that directly correspond with the evaluated employee’s wage increase. In *Bayou Manor Health Center*, 311 NLRB 955, 955 (1993), the Board held the licensed practical nurses were statutory supervisors because they completed employee evaluations that directly affected the certified nursing assistants’ salaries. The licensed practical nurses in *Bayou* completed evaluation forms with 16 characteristics, assigning each characteristic a numerical score ranging from one to ten. *Id.* An average score was given to the evaluation, and the employer’s administrator granted wage increases corresponding to that evaluation’s average score. *Id.*; See also *Cape Cod Nursing and Retirement Home*, 329 NLRB 233 (1999) (charge nurses were found to be supervisors where they assigned individual ratings to nursing assistants, and the ratings were the basis for the overall rating on which specific percentage increases were rewarded).

In the present case, the group leaders conduct evaluations of production employees that directly correspond to evaluated employees’ wage increases. The Employer presented a sampling



of 20 employee evaluations conducted by group leaders that measure the production employees' work performance. Just as in *Bayou*, the group leaders complete these evaluations using independent judgment because they are executed without any input from management. In *Bayou*, the evaluators gave the evaluation forms to management, who computed the total average score. In the instant situation, the group leaders actually compute the final score, and based on that final score, determine the amount of the wage increase to be given to the production employee. The evaluations are performed in the Employer's interest because there is no specific evidence in the record that management changes or overrides the ratings issued by the group leaders, or alters the wage increases determined by the group leaders. In accordance with *Bayou*, the Employer has satisfied its burden.

In its post-hearing brief, the Union argues group leaders only have limited, provisional authority to evaluate employees, subject to the supervisor's final decision. The Union makes this argument based on the testimony of Tesmer, Meinholz, and Hansen. Tesmer testified supervisors have the final authority over evaluations and Meinholz and Hansen testified they turned the evaluations they completed into their supervisors for review and for any changes. However, no specific evidence was entered into the record of instances when supervisors changed the ratings of the evaluations completed by Meinholz, Hansen, or Tesmer. Tesmer also testified she fills out the evaluation forms independently of a supervisor and presents the evaluation form she completed to the employee before she turns it into the supervisor. The Union also did not argue that any of the 20 evaluations submitted into the record that led to pay increases had been altered by a supervisor after completion by the group leader. Therefore, I do not find the Union's argument persuasive.

**b. Ability to responsibly direct**

The Employer maintains group leaders are supervisors because they responsibly direct production employees. The Union does not advance any argument as to whether or not group leaders responsibly direct production employees. In *Oakwood*, the Board found that:

[for direction] to be “responsible,” the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other...[t]hus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.

348 NLRB at 692. Wartgow testified that when she was a group leader, she moved employees around to different jobs to meet production needs and to ensure orders are complete and accurate. Jansen, a current group leader, testified he routinely moves employees around to different jobs depending on the quantity of work that needs to be completed. Wartgow and Jansen also testified they both had been informed by a production supervisor that they could be disciplined if their lines did not perform. Jansen also testified he and other group leaders were informed they could lose their group leader positions if their areas did not meet certain production standards. The Employer submitted two examples of group leaders receiving disciplinary actions because products on their lines were not properly produced. Both were disciplined because employees on the line they oversaw made mistakes and because they, as group leaders, did not ensure all of the products in their area met certain standards. While there is not a separate category on the group leaders' evaluation form for their ability to responsibly direct employees, the group leaders are evaluated on the quality/accuracy and quantity of the products created on the line they oversee. Union witness Meinholz testified he was criticized more than once in his evaluations for the performance of his line, that he was put on a plan of corrective action because of the performance

of his line, and that he was removed from his group leader position because of a lack of respect towards him by his employees. Union witness Tesmer also testified she was evaluated as a group leader in her evaluation based on the performance of the line she oversaw. Based on the evidence, I find the group leaders are held accountable for the performance of the areas they oversee and therefore, have the authority to responsibly direct employees.

**c. Ability to assign work**

In *Oakwood*, the Board said the authority to “assign” refers to “designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant over-all duties, i.e. tasks to an employee” and these are designations of significant overall duties to an employee, not ad hoc instructions that the employee perform a discrete task. 348 NLRB at 689. The party seeking to establish supervisory authority must also show the putative supervisor has the ability to require that a certain action be taken. See *Golden Crest*, 348 NLRB at 729.

In the present case, newly hired production employees are designated to their first job by their group leader, where they remain working unless they are moved by their group leader, and it is the group leader who determines if the employees’ skills would be better utilized in another job. For example, Wartgow moved J.B. from the assembly table job to the more detail-oriented job working on fiberglass sills once Wartgow recognized J.B.’s ability to focus on details. Wartgow testified she made this decision by looking at J.B.’s skill set, which she derived from J.B.’s performance on the assembly table. Wartgow testified she used her judgment in moving J.B. to the fiberglass sills area. Other examples of group leaders moving employees to different jobs in the plant were presented, however, the examples were either not specific enough or more likely related to an equalization of work loads. However, with the example of Wartgow and J.B.,

I find Wartgow used her independent judgment to assign J.B. to a different, distinct job.

In the present case, the Employer submitted into evidence three specific examples of employees being disciplined for refusing to follow the orders of their group leaders. In one instance, an employee was issued a written warning for refusing to follow the instruction of her group leader to trim TFT. In another, an employee was issued a verbal warning for refusing to work in an area that she was assigned to by her group leader. In the third, an employee was issued a written warning for ignoring a request of her group leader to complete frames in the area. Union witness Hansen also testified employees in her area cannot refuse her instructions. Therefore, I find group leaders have the ability to require certain tasks be taken by the production employees in the area.

**d. Ability to effectively recommend discipline**

As previously stated, the parties stipulated on the record that group leaders do not have the authority to independently issue disciplinary actions to employees and that they do not sign disciplinary actions. The Employer maintains the group leaders, however, do effectively recommend discipline. The Board has consistently required that for recommendations by alleged supervisors to be considered “effective,” it must be shown the recommendations have some independent effect. In *Brown & Root, Inc.* 314 NLRB 19 (1994), safety inspectors who issued safety “citations” to employees were not found to be supervisors because the acknowledged supervisors independently investigated the incidents before deciding whether to take disciplinary action. Therefore, the inspectors’ “citations” were found not to have any independent disciplinary effect. However, the facts in this case are more similar to those in *Progressive Transportation Services*, 340 NLRB 1044 (2003). In that case, the Board found a “deck lead supervisor” to be a statutory supervisor based on effectively recommending discipline because the deck lead

supervisor would bring disciplinary issues to the attention of her manager who, without conducting his own investigation, would determine the level of disciplinary action to be issued to the employee based on the deck lead supervisor's recommendation. In the instant case, three examples were discussed of acknowledged supervisors issuing disciplinary actions to employees based on the recommendations of group leaders without further investigation. Popovich testified he issued a disciplinary action to an employee for refusing to work in an area assigned to her by her group leader based on the recommendation of that group leader and without any further investigation into the matter. Jansen also testified he had requested two disciplinary actions be issued to employees in the past and in both situations, the disciplinary action was issued without any further investigation. The Union does not specifically address these three disciplinary actions or advance any evidence or argument as to why I should not find the group leaders effectively recommended discipline in these situations. Instead, the Union argues in its brief that group leaders cannot independently issue disciplinary actions or sign disciplinary actions, however, this was already stipulated to by the parties. The Union also argues when Wartgow requested an employee be disciplined for using profane language towards her, that any employee could have gone to Human Resources to report an employee had used abusive/profane language towards them. However, regardless of the instance when Wartgow requested discipline because an employee used profane language towards her, I find the evidence demonstrates the group leaders have the authority to effectively recommend discipline since disciplinary actions are issued to the employees based on the group leaders' recommendations, and that there is no further investigation done into the allegations.

**e. Ability to lay off and recall employees and/or effectively recommend the layoff and recall of employees**

The Employer maintains group leaders have the authority to lay off and recall employees

and they have the authority to effectively recommend the layoff and recall of employees. The Union asserts group leaders do not possess the authority to lay off or recall employees and does not advance any argument as to whether group leaders can effectively recommend the layoff or recall of employees. Indirect testimony was given about a group leader who temporarily laid off employees in his area due to a lack of work without permission from a supervisor. Jansen testified he has laid off employees for short periods of time due to a lack of work. However, the evidence is insufficient to establish whether or not Jansen requested permission from a supervisor before doing so. The Union presented three witnesses who testified they did not have the authority to lay off employees on their own as group leaders. I find there is insufficient evidence to establish that group leaders have the authority to independently lay off employees. There was no evidence submitted of group leaders independently recalling employees to work, so, I find there is insufficient evidence to establish group leaders have the authority to recall employees.

The standard the Board has applied to determine whether recommendations for personnel action are given enough weight to render them supervisory is that such recommendations are “insufficient to satisfy the statutory standard for supervisors unless ... management is prepared to implement the recommendation without an independent investigation of the relevant circumstances.” *Chevron U.S.A.*, 309 NLRB 59, 65 (1992). Evidence was submitted about Wartgow and Jansen recommending to their supervisor that certain employees be laid off and that these recommendations were followed by their supervisor. Jansen testified he looked at his employees’ cross-training, attitude, safety, quality, and ability to work in more than one area when selecting the employees he would recommend to be laid off. Based on this evidence, I find group leaders have the authority to effectively recommend employees be laid off and that they

use independent judgment in making these recommendations. Evidence was also submitted of a group leader who recommended an employee to be recalled and that this recommendation was followed by her supervisor. Therefore, I find the group leaders also have the authority to effectively recommend employees for recall.

**f. Ability to transfer employees**

The Employer does not maintain that group leaders have the authority to transfer employees independently or to effectively recommend the transfer of employees. Popovich testified that only supervisors can transfer employees, but the record indicates at least one instance of a group leader requesting an employee be transferred to another production line and Popovich agreeing to that transfer. However, the record does not contain any details regarding this transfer. For that reason, I find there is insufficient evidence to establish group leaders have the authority to transfer employees or effectively recommend the transfer of employees.

**g. Ability to address grievances and concerns**

Evidence in the record indicates production employees are supposed to first take their concerns or grievances to their group leaders, who have the authority to address the issue. If the group leader feels he/she cannot handle the issue or a group leader is not available, employees are supposed to next go to their key person, supervisor, or Human Resources. The record is insufficient to establish what kind of concerns or grievances group leaders routinely address. Jansen testified he addresses employee concerns in weekly meetings with his employees and provided an example of deciding to rotate painters because of an employee concern of products not being properly painted. Based on the evidence in the record, I find there is insufficient evidence to establish group leaders have the authority to address grievances and concerns.

#### **h. Other supervisory indicia**

The Employer does not maintain group leaders have the authority to hire, terminate, suspend, or promote employees or that they have the authority to effectively recommend these actions. The only evidence in the record regarding these four indicia are statements by two Union witnesses that they did not have the authority to hire and terminate employees as group leaders. Therefore, there is insufficient evidence to establish the group leaders possess these four indicia.

The Union also asserts the group leaders are not able to set their own hours, do not receive supervisory training, do not attend daily production meetings, and do not attend the Employer's "supervisory picnic," all as production supervisors do. However, none of these fall into the twelve indicia found in Section 2(11) of the Act, which defines a supervisor. An individual only need possess one of the twelve indicia listed in Section 2(11) to sufficiently be found a supervisor. *Providence Hospital*, 320 NLRB 717 (1996). Therefore, the absence of secondary indicia is not dispositive since individuals need not even possess all of the indicia listed in Section 2(11) of the Act.

#### **2. Key Persons**

The uncontradicted testimony in the record is that key persons have the same authority as group leaders, except that they are responsible for a larger area and greater number of individuals. The uncontradicted testimony in the record is also that group leaders work directly below key persons and key persons fill out the evaluations of the group leaders in the same manner group leaders fill out evaluations for production employees. Therefore, based upon my review of the evidence, and for the reasons I found group leaders to be supervisors, I conclude the key persons are also Section 2(11) supervisors, because they have the authority, in the interest



of the Employer, to reward employees, responsibly direct employees, assign employees, effectively recommend discipline, and effectively recommend layoff and recall.

### **B. Community of Interest Issues**

Another issue before me today is to determine whether or not production schedulers and expeditors should be included in the petitioned-for unit. Resolution of unit composition issues begins with an examination of whether the petitioned-for unit is appropriate. *Overnight Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is appropriate, then the inquiry ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001). In making a determination as to whether a petitioned-for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioner be an appropriate unit for collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. *Overnight Transportation Co.*, 322 NLRB at 723 (citations omitted); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (“There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’”) (emphasis in the original). In evaluating the appropriateness of a petitioned-for unit, the Board relies on the community of interest standard. *Overnight Transportation Co.*, 322 NLRB at 724. The Board considers several factors in determining community of interest among employees including: methods of pay, hours of work, benefits, commonality of supervision, qualifications, training and skills, common job functions, amount of time spent away from the plant situs, frequency of contact and interchange with other employees, functional integration, and bargaining history. *Id.*; *Ore-Ida Foods, Inc.* 313 NLRB 1016, 1019 (1994).

## **1. Production Schedulers**

The Employer maintains the production schedulers should be included in the petitioned-for unit because they share a community of interest with production employees. Specifically, the production schedulers and production employees all have the same type of colored badge, the same benefits, work under the same handbook, have the same dress code, have common supervision, work under similar working conditions, and because the production schedulers occasionally perform production work. The Union does not dispute any of the Employer's characterizations of the similarities between the production schedulers and production employees, except the Union argues the production schedulers do not perform production work as the Employer asserts. The Employer did not put any specific evidence into the record of production schedulers performing production work and no testimony was given by a production scheduler. The Union, in its brief, points out that Meinholz testified he had never seen a production scheduler working on a production line. The Union also argues the production schedulers work away from the production floor and perform a variety of unspecified clerical functions. Further, all hourly employees, including key persons and group leaders, work under the same handbook, receive the same benefits, work under similar working conditions, have the same dress code, and the same colored badge.

Production schedulers generally work in an office in the central complex away from the production lines. There was no evidence in the record regarding the contact between production schedulers and production employees or the frequency of that contact. While Wartgow and Popovich testified the production schedulers perform production work when they are done with their scheduling duties, there were no specific examples of this work put in the record. Despite the similarities in pay and supervision between production schedulers and production employees,

there are differences in physical location and the main job functions of the two groups of employees. The production schedulers work in the main offices away from the production lines where the production employees work and appear to work more with computers and paperwork. For all of these reasons, I find there is insufficient evidence that the production schedulers functionally share a community of interest with the production employees in the petitioned-for unit.

## **2. Expeditors**

The Employer also maintains expeditors should be included in the petitioned-for unit for the same reasons as production schedulers. In support of its position, the Employer relies on the fact the expeditors and production employees wear the same type of badge, have the same dress code, work under the same handbook, and work under the same working conditions. The Union argues the expeditors should also be excluded for the same reasons as the production schedulers but also because they do not share common supervision with the production employees.

Like the production schedulers, expeditors work in the central office complex where the main offices are, away from the production lines where the production employees work. There was no evidence introduced in the record of any specific examples of expeditors working on production lines, and Hansen and Meinholz testified they had never seen an expeditor working on a production line. Tesmer also testified the expeditors never fill in for production employees. Expeditors also do not share a common supervisor with the production employees. Expeditors are listed as a separate category in Employer Exhibit 1 and report directly to Popovich, instead of to a group leader like production employees do. The expeditors also do not have similar primary tasks with the production employees. The primary tasks of the expeditors appear to be related to computers and paperwork, whereas the primary tasks of the production employees appear to be

related to the production line. The expeditors are also paid approximately \$1.00 more per hour than production employees. For these reasons, I find there is insufficient evidence to establish the expeditors share a community of interest with the production employees.

#### **IV. CONCLUSIONS**

I conclude the Employer has met its burden of establishing the group leaders and key persons are Section 2(11) supervisors because they have the authority, in the interest of the Employer, to reward, responsibly direct, assign, effectively recommend discipline, and effectively recommend layoff and recall. As such, the key persons and group leaders are excluded as Section 2(11) supervisors.

I also conclude there is insufficient evidence of community of interest between production schedulers and production employees and between expeditors and production employees. As such, production schedulers and expeditors shall be excluded from the unit.

I conclude the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time production and maintenance employees, including line coordinators and plant clericals employed by Weather Shield, Inc. at its 400 Legacy Lane, Park Falls, Wisconsin facility.

**EXCLUDED:** production schedulers, expeditors, the industrial engineer, product design engineer, plant controller, plant manager, production control and operations manager, office clerical employees, technical employees including the CNC programmer, guards and supervisors as defined by the Act, including environment and safety supervisors, and all other employees.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit

who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily on layoff status. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Union Local 662.

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the Regional Director for Region Eighteen, two copies of an election eligibility list, containing the full names (including first and last names) and addresses of all the eligible voters, and upon receipt, the

Regional Director for Region Eighteen shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Region Eighteen Regional Office by July 28, 2010.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

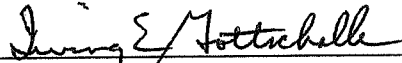
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, and 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by August 4, 2010.**

### **OTHER ELECTRONIC FILINGS**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the website,

select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Signed at Milwaukee, Wisconsin on July 21, 2010.

A handwritten signature in cursive script, reading "Irving E. Gottschalk", positioned above a horizontal line.

Irving E. Gottschalk, Acting Regional Director  
National Labor Relations Board  
Eighteenth Region  
330 South Second Avenue, Suite 790  
Minneapolis, Minnesota 55401